

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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|----------------------------|---|--------------|
| MICHAEL AND KIM RINNIER | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| THE TERMINIX INTERNATIONAL | : | |
| COMPANY, L.P. | : | 05-299 |

MEMORANDUM AND ORDER

Fullam, Sr. J.

March 3, 2005

Plaintiffs, homeowners who allege they have been beset by termites, have sued the company they hired to eradicate the infestation. Because any dispute between the parties belongs in arbitration, I will dismiss this case.

In 2002, relying on an arbitration clause in the contract between the parties, Plaintiffs filed a petition to compel arbitration in the Delaware County Court of Common Pleas. The Delaware County court appointed an arbitrator, who heard the dispute and issued a substantial award in Plaintiffs' favor. The Delaware County court confirmed the award, but the Pennsylvania Superior Court reversed and vacated the award, holding that because the contract specified that arbitration follow the rules of the American Arbitration Association, and those rules call for the appointment of an AAA arbitrator, the award resulted from an "irregularity" in the entire arbitration process. The Rinniers filed a petition for allowance of appeal in the Pennsylvania

Supreme Court; that petition is pending. They also filed a new action (this one) in Delaware County, which Terminix removed to this Court. The arbitration case proceeded on a breach of contract theory; this complaint asserts a claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

In response to Defendant's motion to dismiss, Plaintiffs argue first that the consumer protection claim need not be litigated with the contract claim, allegedly because the consumer protection claim lies in equity, a contention for which Plaintiffs offer no support and which, because they seek money damages, is unconvincing. If they wish to pursue the consumer protection claim, Plaintiffs must arbitrate it with the breach of contract claim in the prior pending action.

Second, Plaintiffs argue for the first time that the arbitration provision is unenforceable and unconscionable. However, Plaintiffs, represented by counsel, filed a petition to compel arbitration based on that provision. Their unhappiness with the Pennsylvania Superior Court's ruling regarding selection of the arbitrator notwithstanding, Plaintiffs must be considered to have waived any objection to the validity of the arbitration clause.

An order follows.

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ORDER

AND NOW, this 3rd day of March, 2005, upon consideration of Defendant's Motion to Dismiss, Alternatively, to Compel Arbitration, and the response thereto,

It is hereby ORDERED that Defendant's Motion is GRANTED. The complaint is dismissed without prejudice to Plaintiffs' ability to pursue the claim in arbitration. The Clerk is directed to mark the case CLOSED.

BY THE COURT:

/s/John P. Fullam, Sr. J.
John P. Fullam, Sr. J.